

Application No. 10/044,788
Amendment dated November 9, 2004
Reply to Office Action of August 11, 2004

REMARKS

This Amendment responds to the Office Action mailed August 11, 2004. Claims 1, 4-9 and 11-13 remain pending in the application and stand rejected. Claim 1 has been amended herein. Applicant respectfully requests reconsideration in view of the following remarks.

Objections to the Claims

Claim 1 was objected to with respect to the language reciting the directions in which the squeegee blade extends. While Applicant believes that the previous claim language was correct, claim 1 has been amended to more clearly describe the directions that the squeegee blade extends. Applicant asserts that the claim language correctly recites that the squeegee blade extends in first and second directions. Specifically, Applicant notes that the first direction which is "generally transverse to the direction in which the handle extends, and generally transverse to the direction in which the bristles extend," corresponds to a longitudinal axis of the squeegee blade as set forth in the Application at page 7, lines 1-4, and with reference to Fig. 1. The "second direction which has a component in a direction opposite to that in which said bristles extend" corresponds to the upwardly extending portion of the squeegee blade as set forth in the Application at page 6, lines 16-20, and with reference to Fig. 1. Accordingly, claim 1 correctly recites that the squeegee blade

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extends in two directions, namely longitudinally and upwardly. For at least these reasons, Applicant respectfully request that this objection to claim 1 be withdrawn.

Claims 1, 9 and 13 were also objected to for informalities related to recitation of the term "generally". Applicant respectfully traverses these objections. Specifically, Applicant asserts that the term "generally" is a relative term which, in view of the specification and related prior art, reasonably apprises persons of ordinary skill in the art as to the scope of the claims. Specifically, the phrases "generally transverse," "generally in the shape of a spatula," and "generally parallel to the first direction," contemplate that a cleaning implement according to the invention could comprise an embodiment wherein the recited features vary nominally from the recited description. For at least these reasons, Applicant respectfully requests that the objections to claims 1, 9 and 13 be withdrawn.

Claims Rejected under 35 U.S.C. §103

Claims 1, 4, 5, 7-9 and 11-13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. D361,894 to Hoagland in view of U.S. Patent No. 2,900,656 to Tupper, and over U.S. Patent No. 5,317,779 to Hoagland in view of Tupper '656. Claims 1, 4, 5, 7, 9 and 11-13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. D459,088 to Rowe et al. in view of Tupper '656.

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Claim 1 is the only independent claim of these rejected groups and is directed to a cleaning implement comprising "a body from which extends an elongate handle, a plurality of bristles depending from an underside of the body, and an elongate squeegee blade formed of resiliently-flexible material." Applicant respectfully traverses the rejections of claim 1 because Hoagland '894, Rowe '088 and Hoagland '779 fail to teach or suggest all elements of the claimed invention, and there is no teaching or suggestion to combine any of these references with Tupper '656. Specifically, the Office Action admits that Hoagland '894, Rowe '088 and Hoagland '779 fail to teach or suggest a cleaning implement having a blade that is formed from a resiliently flexible material. Tupper '656 is directed to a unitary cleaning, scraping and mixing implement formed from a single thermoplastic material which is deformable and resilient. There is no teaching or suggestion in any of these references, however, that the rigid scraper portions of Hoagland '894, Rowe '088 or Hoagland '779 be modified to incorporate the resilient material of Tupper '656. That such implements formed from resilient material may be known in the art is not, of itself, sufficient basis for an obviousness rejection. MPEP §2143.01; In re Katzab, 55 USPQ. 2d 1313 (Fed. Cir. 2000). Rather, there must be some motivation, teaching or suggestion in the art to make the combination, either explicitly or implicitly. Id. "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." In re Fritch, 23 USPQ. 2d 1780, 1783-84 (Fed. Cir. 1992).

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In this case, the Office Action simply alleges a motivation to combine the references based on the presence of the claimed elements in the cited references. This is clearly hindsight reconstruction using Applicant's own disclosure. The Federal Circuit has repeatedly held that "[i]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." In re Fritch, 23 USPQ 2d 1704 (Fed. Cir. 1992). The combination alleged in the Office Action amounts to a hindsight analysis that uses Applicant's disclosure as a blueprint for finding the claimed combination of elements in the prior art, then combines the prior art on the basis that Applicant taught the desirability of the combination. The particular combination of elements claimed by the Applicant is not taught or suggested by any of the cited references. Applicant's particular combination is uniquely suited to cleaning implements and none of the cited references recognize, teach or suggest the desirability of the particular combination claimed in the Application. Because hindsight-based reconstruction of a claimed invention is forbidden by current law, Applicant respectfully requests that the rejection of claim 1 be withdrawn.

Claims 4, 5, 7-9 and 11-13 each depend from claim 1 and are therefore in condition for allowance for at least the same reasons as claim 1. Accordingly, Applicant respectfully requests that the rejections of claims 4, 5, 7-9 and 11-13 over the combination of Hoagland '894, Rowe '088, or Hoagland '779 with Tupper '656 be withdrawn.

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Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Hoagland '779 in combination with Tupper '656, and in further view of U.S. Patent No. 5,934,762 to Vrignaud. Claim 6 depends from independent claim 1, and is therefore in condition for allowance for at least the reasons stated above for claim 1. Specifically, there is no teaching or suggestion to combine Hoagland '779 and Tupper '656, as set forth in the Office Action. Vrignaud '762 fails to cure these deficiencies. Specifically, Vrignaud '762 is directed to a toothbrush wherein a handle grip 50, 52 is overmolded on the handle portions of the toothbrush. Vrignaud '762 does not teach or suggest that the rigid scraper portion of the cleaning instrument of Hoagland '779 be replaced with an overmolded resilient material. Again, the mere fact that overmolding with a resilient material may generally be known in the art, is not the test for obviousness. There must be some objective teaching or suggestion in the art to modify the references as alleged in the Office Action. For at least these reasons, Applicant respectfully requests that the rejection of claim 6 be withdrawn.

In view of the foregoing amendments to the claims and remarks given herein, Applicant respectfully believes this case is in condition for allowance and respectfully requests allowance of the pending claims. If the Examiner believes any detailed language of the claims requires further discussion, the Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved. The Examiner's prompt attention to this matter is appreciated.

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Applicant is of the opinion that no additional fee is due as a result of this amendment. If any charges or credits are necessary to complete this communication, please apply them to Deposit Account No. 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

By:



David W. Dorton, Reg. No. 51,625

2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202
(513) 241-2324 (voice)
(513) 241-6234 (facsimile)
K:\LWC\1189\amdL.vpd